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IN THE

# Supreme Court of the United States

**October Term, 1974**

74-
**No. 696**

SOCIETE DE CONSTRUCTION MECANIQUES DU BUGEY and TICHAUER ET CIE,

*Petitioners,*

VS.

BELL EQUIPMENT CORPORATION, a corporation, JAMES A. GORSO, JACK CHICONELLA, CLYDE A. TEVIS, HARRY J. PHILLIPS, RICHARD E. McKENNA, AMEDIO VITALE, and THE MARLEY COMPANY,

*Respondents.*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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### Questions Presented

The questions presented are satisfactory to the respondent, except that question IV on page 3 of the Brief should read that the complaints were subsequently refiled on May 21, 1973 and service made under the long arm statute, which statute was effective February 15, 1973.

### Statement of the Case

The statement of the case is acceptable to the respondent with the exception that the petitioners made six shipments of spare parts into Pennsylvania during the period of six months immediately prior to the collapse of the crane.

## Argument

1. In response to petitioner's first reason, such long arm statutes involving products liability cases or the so called stream of commerce cases are commonly and widely used. In addition, the perimeters of the exercise of such jurisdiction has already been set out by this Court in *International Shoe Company vs. State of Washington*, 326 U.S. 310 (1945); *McGee vs. International Life Ins. Co.*, 355 U.S. 220, (1957), and *Hanson vs. Denckla*, 357 U.S. 235 (1958).

2. Petitioners argue in reason two, that they lack substantial contact with the Commonwealth of Pennsylvania because the crane in question was merely brought into Pennsylvania subsequent to the purchase of it by Marley Company. Petitioners reluctantly admit the direct shipment of spare parts into Pennsylvania by petitioners. It is submitted that since the petitioners made the respondent, Bell Equipment Corporation, their exclusive sales agent in the United States, that they knew or should have known that said crane would come into Pennsylvania. The allegation that said crane was defectively designed and manufactured satisfied the stream of commerce theory that they were doing business, because under the statute in question, such action amounted to an indirect shipment into Pennsylvania.

In addition thereto, six separate shipments of parts by petitioners to Marley Company in Pennsylvania, shows their knowledge that it had been brought into Pennsylvania as well as showing direct shipments into Pennsylvania, which constitutes doing business in Pennsylvania and which was a benefit to them.

When these actions are coupled with the alleged tortious injury caused to Pennsylvania citizens and property located in Pennsylvania, substantial contact with the Commonwealth of

Pennsylvania has been shown. This has been the rationale of the majority of the Courts which have considered this matter. *Florio vs. Powder Power Tool Corp.*, 248 F2d 367, (3rd Cir. 1957); *Eyerly Aircraft Co. vs. Killian*, 414 F2d 591, (5th Cir. 1969); *Etzler vs. Dille and McGuire Mfg. Co.*, 249 F. Supp. 1, (W.D. Va. 1965); *Keckler vs. Brookwood Country Club*, 248 F. Supp. 645, (N.D. Ill. 1965); *Harford vs. Smith*, 257 F. Supp. 578, (N.D. W. Va. 1966); *Jackson vs. National Linen Service Corp.*, 248 F. Supp. 962 (W.D. Va. 1965); *Benn vs. Linden Crane Co.*, 326 F. Supp. 995, (E.D. Pa. 1971); *Aquarium Pharm. Inc. vs. Industrial Press & Pack, Inc.*, 358 F. Supp. 441, (E.D. Pa. 1973); *Anderson vs. Penncraft Tool Co.*, 200 F. Supp. 145 (N.D. Ill. 1961); *Gray vs. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d, 761 (1961).

3. The third, fourth and fifth reasons for granting certiorari are without merit and will be treated together in this paragraph. The law set out in *International Shoe Co., supra,* sets forth general guidelines, which are valid today. No one specific rule can be laid down in these product liability cases but of necessity must be decided on the facts of each case. Since the *International Shoe Co.* decision, this Court has set forth clarifying principles in *McGee vs. International Life Co., supra.* In that case, the Court upheld jurisdiction upon a single 'contact' involving an insurance contract. The Court has not passed upon a single transaction situation involving a tort or contract other than insurance, but there seems to be little doubt that it would find either, as a matter of due process, constituted a sufficient contact to subject a non-resident to the jurisdiction of a state Court. In reviewing this Court's decision in *McGee, supra.* the Court cited with approval, in footnote two, the case of *Smyth vs. Twin State Improvement Corp.*, 116 Vt. 569, 80 A.2d 664, 25 A.L.R.2d 1193, in which the Vermont Supreme Court held that a Vermont statute per-

mitting personal jurisdiction over a non-resident defendant who committed a tort in Vermont, did not violate due process. More recently, in *Rosenblatt vs. American Cyanamid Co.*, 382 U.S. 110, (1965), this Court indicated that it would go along with the trend to extend jurisdiction. In that case, jurisdiction was obtained in Italy over defendant under a New York statute authorizing *in personam* jurisdiction over absent non-residents on the basis of tortious conduct in the forum.

Petitioners cite *Benjamin vs. West Load Building Corp.*, 472 F2d 725 (5th Cir. 1973) in their argument for a more specific guideline. Said case was denied certiorari at 414 U.S. 830 (1974).

The rationale for extending jurisdiction to this fact situation is not based solely on the reason that a product is simply brought into a forum as argued by petitioners on page 9 of their Brief. Rather, it is based on the presence of the product in the forum through the stream of commerce and is the cause of substantial injury to person or property within the forum state.

In this instance, the collapse of the crane caused six serious personal injury claims involving the loss of limb, fractures to various limbs and vertebrae, among others. In addition, a property damage claim in excess of Five Hundred Thousand ($500,000.00) Dollars is being asserted.

Certainly, the Commonwealth of Pennsylvania has a significant interest in protecting its citizens and their property from the results of these crippling injuries and damages caused by tortious conduct. Certainly, these contacts meet the "nature and quality" test laid down by this Court in *International Shoe and McGee, supra.*

In addition to the stream of commerce theory, these petitioners shipped merchandise directly into the Com-

monwealth of Pennsylvania on six occasions and indirectly shipped a defective crane into Pennsylvania. Both types of shipments designate them as doing business in Pennsylvania by virtue of the statute in question. As such, the laws of Pennsylvania apply to them.

As to the argument that this Court should review this statute, it is submitted that the Third Circuit Court of Appeals refused to exercise its discretion to review these cases at this point. No abuse of discretion has been alleged or shown by Petitioners. At best, a review by this Court would be premature.

4. The sixth reason, as well as all the others, was fully considered and ably discussed by the Trial Court in its Opinion. Appendix A, page 38. The trial forum is the most convenient place to try these cases. This is where the injuries took place, where the majority of witnesses reside. It does not offend "traditional notions of fair play and substantial justice" to conclude that if the law of Pennsylvania requires sellers to defend in Pennsylvania, why should not the distributors and manufacturers likewise defend their products under Pennsylvania law where the tortious acts occurred? In addition, if traders in interstate commerce are required to so defend under similar circumstances, no valid distinction can be drawn when such traders are international in scope.

## Conclusion

It is respectfully submitted that the procedural rights giving Pennsylvania Courts jurisdiction are determined as of May 21, 1973 and that the law then in effect provides a basis for finding the petitioners "doing business" in Pennsylvania and that such finding, coupled with the impact of the collapse of the crane manufactured and sold by the petitioners, causing

injury to property and persons inside Pennsylvania, gives Pennsylvania Courts a basis for asserting jurisdiction which is consistent with the Due Process requirements of the United States Constitution and the Petition For Writ Of Certiorari should be denied.

Respectfully submitted,

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